THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO. 4958 OF 1995

Date: 28.02.2006

Between:

Mohd. Sirajuddin Ansari, S/o Mohd. Osman Ansari, aged: 35 years, Occ: Shift Supervisor, R/o Sivarampalli, Ranga Reddy District.

… Petitioner

and

Chairman & Managing Director, A.P. Cooperative Oil seeds Growers' Federation Ltd., 9th Floor, Parishrama Bhavan, Fatehmaidan Road, Hyderabad 029.

… Respondent.

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ORDER:

Proceedings of the respondent dated 13.05.1994, in terminating the services of the petitioner, as confirmed in proceedings dated 19.10.1994, whereby the petitioner's representation was rejected, is impugned in this writ petition.

2. Brief facts, to the extent necessary, are that the petitioner joined duty on 04.07.1998 and, vide proceedings dated 15.11.1989, his services were absorbed as a shift supervisor. Petitioner would contend that due to his son's ailment he was frequently on leave and the prolonged treatment given to his son necessitated his going on leave from time to time. Petitioner would contend that he was sanctioned leave from 07.07.1993 to 06.09.1993 and he was therefore absent from duty only from 07.07.1993. Petitioner would contend that

he applied for 30 days earn leave from 07.06.1993 to 06.07.1993 as his son was suffering from Brain Damage and later extended it by another 30 days through his leave letter 28.06.1993. Again, through his leave letter dated 28.07.1993, the petitioner sought leave upto 06.09.1993. According to the petitioner while he was sanctioned leave upto 06.09.1993, the respondent did not sanction leave thereafter. Petitioner would contend that he had submitted leave letters dated 28.10.1993, 30.01.1994 and 04.05.1994 but the respondents, without reference to these letters, issued proceedings dated 13.05.1994 terminating his services with immediate effect. Petitioner would submit that he had filed a representation on 01.08.1994 seeking extension of leave upto 04.10.1994 and another representation on 27.09.1994 wherein he referred to his leave applications while expressing his inability to join duty earlier as he was on leave on medical grounds. Petitioner would contend that the respondent, vide letter dated 19.10.1994, rejected his representation stating that ample opportunity was given to him to join duty before terminating his services. Petitioner would contend that there are similar instances where prolonged absence and consequent removal had subsequently resulted in such employees being taken back into service. Petitioner would refer to one P.M. Subhani who was absent continuously for a considerable stretch of time. He would also refer to the case of one Bhakta Rao, a Field Officer, who was absent from duty for more than three years. Petitioner would contend that the punishment of removal from service is disproportionate to the charge and had left him without employment resulting in his starvation and his family suffering untold misery.

3. A Counter affidavit is filed on behalf of the respondents wherein it is stated that the frequent absence of the petitioners from duty, without leave being sanctioned before hand, had caused immense loss to the Federation, which had to make emergent alternative arrangements due to the unauthorized absence of the petitioner. It is stated that even during the short spells, when the petitioner attended duty, his performance was wholly unsatisfactory and that he was never keen in discharging his duties to the satisfaction of his superiors. It is stated that it was reliably learnt that the petitioner was serving some Foreign Organisation abroad and was intermittently coming to India and making all sorts of leave applications. Respondent would submit that subsequently an application for earn leave, for the period from 07.07.1993 to 06.08.1993, was

received in the office of the Oil Packaging Station, Sivarampally. It is stated that without leave being sanctioned the petitioner absconded from duty. Reference is made to R.5.1 and 5.2. of the Federation rules to contend that no employee shall proceed on leave unless leave is sanctioned by the competent authority except under unforeseen circumstances. It is stated that since the petitioner was not sanctioned leave, and since he had not joined duty, his absence was treated as unauthorized which amounted to a serious misconduct. Reference is made to Regulation 12.2 whereunder the unauthorized absence from duty for more than 10 days would render the employee liable to be terminated without notice. Reference is also made to the memo issued to the petitioner on 09.11.1993, directing him to explain why his services should not be terminated for violating the Leave regulations. It is stated that the said memos sent by R.P.A.D to the address given by the petitioner was returned by the postal department with the endorsement 'party not available'. Another memo dated 15.01.1994 was issued which was also returned with the endorsement 'no such person present in that house'. According to the respondents, the petitioner is also guilty of furnishing false addresses in his leave applications. It is stated that another memo was issued calling upon the petitioner to submit his explanation for furnishing a wrong address, which was also returned on 02.04.1994 with the endorsement 'left India'. A paper notification was issued, in the Deccan Chronicle dated 14.04.1994, directing the petitioner to join duty of the Federation within 15 days of publication of the notice, i.e., by 28.04.1994. Respondent would contend that these facts would reveal that the petitioner was not willing to work. It is stated that since the petitioner did not appear before the Federation even after the paper publication nor did he give any reply, his services were terminated with effect from 13.05.1994 and the termination orders were sent to the petitioner's last known address on 16.07.1994. It is stated that despite many opportunities being given to the petitioner he failed to avail the said opportunities and did not choose to join duty with the respondents. It is only after his services were terminated that the petitioner submitted his representation on 27.09.194 which was replied to vide proceedings dated 19.10.1994.

4. Insofar as the contention that no enquiry was conducted, it is not in dispute that the petitioner was absent from duty without prior sanction of leave from

06.09.1994 till his services were terminated on 13.05.1994 ie., for a period in excess of eight months. It is not even the case of the petitioner that he had applied for leave which was sanctioned by the respondents. Without leave being sanctioned, it is not open for the petitioner to contend that his prolonged absence from duty, of more than eight months, should automatically be condoned and that he should be permitted to join duty whenever he chooses to do so. It is well settled that rules of natural justice have no application where the facts are either admitted or are not in dispute. In the present case, since it is not in dispute that the petitioner had remained absent for more than eight months and since unauthorized absence, under the service rules of corporation, amounted to serious misconduct, the action of the respondent in terminating the services of the petitioner cannot be said to be in violation of principles of natural justice. With regards the plea of discrimination, it is necessary to note that none of the employees, referred to in the writ petition, are arrayed as respondents in the writ petition. Even if the allegations made regarding unauthorised absence of such employees is accepted as true merely because no action was taken against such employees, for dereliction of duty and for remaining unauthorisedly absent, the petitioner would not be entitled to claim, as of right, that he should also be conferred the said benefit. It is well settled that no mandamus can be issued directing the respondents to perpetuate an illegality. Merely because the respondents have ignored the relevant rules and have failed to take action against other employees, does not mean that no action should be taken against the petitioner also. The plea of discrimination fails.

5. The writ petition as filed is wholly misconceived and is accordingly dismissed. However in the circumstances without costs.

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RAMESH RANGANATHAN, J

Date: 28.02.2006.

MRKR